

R E M A R K S

Claims 6 and 7 are allowed. Claims 11-15 have been added. Claim 2 previously allowed now stands rejected and is at issue.

Applicant respectfully traverses the rejection of claim 2 as unpatentable over Kato et al in view of Baumann et al. The rejection is based upon a hindsight generated rationale that is simply not supported by the disclosures of Kato et al and Baumann et al, and accordingly the rejection fails to establish a *prima facie* case of obviousness.

More specifically, Kato discloses a construction wherein a flattened tube 1 has been inserted through a header plate 3 with the long side walls 31,75,84 folded flat against the interior surface of header plate 1 so that a brazed joint 32,76,86 is formed directly below the header plate 1 and the walls 31,75,84. This construction differs completely from that disclosed in Baumann wherein the tubes 4 extend through inwardly directed flanged openings 5 in a header plate 3 and are brazed to the interiors of flanged openings 5 of the header plate 3 (see Fig. 4 of Baumann). Thus, Baumann focuses on a header-to-tube connection wherein the tube is connected to the inside of a flanged opening, with the bent portions 14 of the end of the tube 4 extending upward above the header 3 and its flanged openings 5, whereas Kato et al is directed to a tube-to-header connection wherein the flattened portions of the end of the tube are brazed directly to the inwardly facing surface of the header plate 3 to achieve a

strong joint. There is absolutely nothing in Baumann that suggests that the construction shown in its Fig. 4 would somehow strengthen or improve any of the embodiments of Kato et al which does not have the flanged openings 5 of Baumann. Indeed, by placing the edges of the flared walls 31,75,84 of the tubes of Kato et al closely together, such as shown in Fig. 4 of Baumann, Kato et al's desired direct connection between the header 3 and the flared walls 31,75,84 of the tubes may be prevented and certainly would be minimized, thereby overcoming the advantages presented by the construction in Kato et al. This is not allowed. Accordingly, there is no factual support in either Kato et al or Baumann for the assertion that the structure of Baumann would provide strength to the structure of Kato et al. Absent such support, the rejection fails to establish a *prima facie* case of obviousness indeed, and appears to be simply based on a rationale that has been formed via hindsight reconstruction of the structure recited in claim 2. Again, this is not allowed. In view of the foregoing, the rejection is improper and should be withdrawn and claim 2 allowed.

To the extent that the above rejection is maintained, it is respectfully and specifically requested that the Examiner provide a citation to the exact portions of the text of Baumann or Kato et al that support any assertions made for the rationale in making the proposed combination of the rejection.

Claim 11-15 have been added and correspond to previously cancelled claims 1, 3-5 and 10, respectively, which were cancelled without preju-

dice in Applicant's prior amendment in view of the Final rejection. These claims were cancelled in the prior amendment so as to obtain allowance of the allowed claims without prolonging the prosecution of the application via an appeal of the rejected claims. However, in view of the newly issued rejection of previously allowed claim 2, the non-finality of the rejection, and that the previously cancelled claims were rejected on the same improper basis as the current rejection of claim 2, these claims have been added and are respectfully submitted to be allowable.

In view of the foregoing, Applicant respectfully requests the withdrawal of the rejection of claim 2 and allowance of the case.

Respectfully submitted,

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